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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

2008 JUN -4 A 11: 09

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

AUDIT REFERRAL: 08-05

DATE REFERRED: March 21, 2008

DATE ACTIVATED: April 3, 2008

STATUTE OF LIMITATIONS: Jan. 8, 2008 -  
November 1, 2009<sup>1</sup>

**SOURCE:**

AUDIT REFERRAL

**RESPONDENTS:**

National Right to Life PAC and Amerie Natividad, in  
her official capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(g)(1)(A)  
2 U.S.C. § 434(g)(1)(B)  
2 U.S.C. § 434(g)(2)  
11 C.F.R. § 104.3 (b)(3)(vii)  
11 C.F.R. § 104.4(a)  
11 C.F.R. § 104.5(g)(2)

**INTERNAL REPORTS CHECKED:**

Audit Documents  
Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter was generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of the  
National Right to Life PAC ("Committee") covering the period January 1, 2003 through  
December 31, 2004 ("audit period"). The Audit Division submitted the Final Audit Report

<sup>1</sup> A number of violations occurred during 2003-2004. However, because the actual dissemination/distribution dates for most of the expenditures are not known, it is difficult to identify with certainty the appropriate range of the statute of limitations. Nevertheless, we have established a range of dates based on the first expenditure relevant to this matter, January 8, 2003, and the last possible date in which a 24 hour notice could have been filed, November 1, 2004.

1 ("FAR") to the Commission on March 14, 2008. Attachment 1.<sup>2</sup> On March 18, 2008, the Audit  
2 Division referred Finding 2 to this Office for enforcement. The audit finding relates to the  
3 Committee's failure to timely file 24 and 48-Hour Notices of Independent Expenditures during the  
4 audit period. During that period, the Committee made 1,545 independent expenditures totaling  
5 \$3,718,909.

6 For both 24 and 48-Hour Notices of Independent Expenditures, the date that a  
7 communication is publicly disseminated or distributed serves as the date a committee must use to  
8 determine if the total amount of independent expenditures, in the aggregate, has reached or  
9 exceeded the threshold for reporting. 11 C.F.R. §§ 104.4(f) and 104.5(g)(2). According to the  
10 FAR, the Committee admitted during the exit conference that it itemized all independent  
11 expenditures and filed 24 and 48-Hour Notices based on the date of the check to the vendor, rather  
12 than based on the dissemination or distribution date. Moreover, for the majority of the  
13 expenditures, the Committee failed to maintain dissemination/distribution date documentation of  
14 the communications. In the instances where the dissemination/distribution date was ascertainable,  
15 the Committee failed to file or untimely filed the corresponding 24 and 48-Hour Notices.

16 Based on the information set forth in the FAR, we recommend that the Commission find  
17 reason to believe that:

- 18 • The Committee failed to file or untimely filed 24 and 48-Hour Notices of  
19 Independent Expenditures, in violation of 2 U.S.C. § 434(g) (See Finding 2,  
20 Attachment 1 at page 1).  
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<sup>2</sup> The FAR is currently awaiting approval by the Commission.

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**III. RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that National Right to Life Political Action Committee and Amarie Natividad, in her official capacity as treasurer, failed to file or untimely filed 24 and/or 48-Hour Notices of Independent Expenditures, in violation of 2 U.S.C. § 434(g).
3. Approve the Factual and Legal Analysis.
- 4.
- 5.

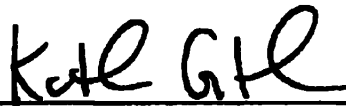
6. Approve the appropriate letter.

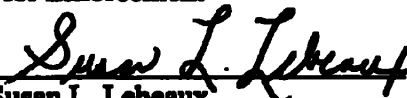
Thomasenia P. Duncan  
General Counsel


Ann Marie Terzaken  
Associate General Counsel for  
Enforcement

6-3-08  
Date

BY:

  
Kathleen M. Guith  
Acting Deputy Associate General Counsel  
for Enforcement

  
Susan L. Lebeaux  
Assistant General Counsel

  
Roy G. Luckett  
Attorney

Attachments:

1. Proposed Final Audit Report of the Audit Division on National Right to Life PAC



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AUDIT REFERRAL # 08-05

March 14, 2008

MEMORANDUM

To: Thomasenia P. Duncan  
General Counsel

Through: Patrina M. Clark *Juan For Ame*  
Staff Director

From: John D. Gibson *JDG*  
Chief Compliance Officer

Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

Thomas Nurthen *TN*  
Audit Manager

By: Mary Moss *MM*  
Lead Auditor

Subject: National Right to Life Political Action Committee (A05-48) - Referral  
Matters

On February 20, 2008, the final audit report on National Right to Life Political Action Committee (NRLPAC) was forwarded to the Commission. The final audit report included the following matter that meets the criteria for referral to your office:

- Finding 2. Failure to File Notices of Independent Expenditures. NRLPAC failed to maintain dissemination date documentation for a majority of the \$3,718,909 in independent expenditures it made during the audit period. Where the dissemination date was known, NRLPAC failed to file or untimely filed 24 or 48 hour notices. Finally, independent expenditures paid subsequent to the dissemination date were not properly disclosed.

ATTACHMENT 1  
Page 1 of 4

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## **Finding 2. Failure to File Notices of Independent Expenditures**

### **Summary**

During the audit period, NRLPAC made independent expenditures totaling \$3,718,909. NRLPAC failed to maintain documentation supporting the dissemination date for the majority of these independent expenditures. Where the dissemination date was known, NRLPAC failed to file or untimely filed 24 or 48 hour notices for a material number of independent expenditures. Finally, independent expenditures paid subsequent to the dissemination date were not properly disclosed on Schedule D (Debts and Obligations) and Schedule E (Independent Expenditures). In response to the interim audit report, NRLPAC provided details pertaining to new procedures they plan to implement.

### **Legal Standard**

**Independent Expenditures – Definition.** An independent expenditure is a expenditure for a communication, such as a website, newspaper, TV or direct mail advertisement that:

- expressly advocates the election or defeat of a clearly identified candidate; and
- is not made in consultation or cooperation with, or at the request or suggestion of a candidate, candidate's committee, party committee or their agents. 11 CFR §§104.4 and 109.20(a).

**Disclosure requirements – general guidelines:** An independent expenditure shall be reported on Schedule E, when added to other independent expenditures made to the same payee during the same calendar year, exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11

**Last-Minute Independent Expenditure Reports (24-Hour Notices):** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required for each additional \$1,000 that aggregates. The 24-hour notice must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

**Last-Minute Independent Expenditure Reports (48-Hour Notices):** Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. 11 CFR §§104.4(f) and 104.5(g)(1).



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### **Facts and Analysis**

During the audit period, NRLPAC made 1,545 independent expenditures (\$3,718,909) on behalf of 74 federal candidates. For the majority of the expenditures, NRLPAC failed to maintain documentation to support the dissemination date of the communications. Since the dissemination date was not known, NRLPAC filed 24 and 48 hour notices based on the check date for the expenditures.

Seventy-one independent expenditures, totaling \$176,721 on behalf of 16 candidates were made during the period January 1, 2003 through September 30, 2004. A review of these transactions indicated 24/48 hour notices for 42 independent expenditures, totaling \$110,168, were either not filed (9) or filed untimely (33). Twenty-nine of the untimely notices were filed after the general election. These notices were not only filed untimely but NRLPAC did not properly disclose the respective independent expenditures.

Between October 1, 2004 and December 31, 2004 NRLPAC made 1,474 independent expenditures, totaling \$3,542,188, on behalf of 62 candidates. A sample review of these independent expenditures determined that the required notice was either not filed or filed untimely for 30% of the items tested. Similar to the above, a number of independent expenditures paid subsequent to the general election were not properly disclosed.<sup>1</sup>

The reporting requirement for independent expenditures is based on the dissemination date, and, in certain cases the reporting requirement is based on both the dissemination date and the check date. An independent expenditure paid subsequent to the dissemination date should be disclosed as a memo entry on Schedule E and as a debt owed to the vendor on Schedule D in the reporting period that the independent expenditure was disseminated. When this independent expenditure is paid, it is reported on Schedule E and the reported debt on Schedule D is then disclosed as paid. For these independent expenditures, NRLPAC merely disclosed the independent expenditure on Schedule E at the time of payment.

This matter was discussed with the NRLPAC representatives during the exit conference. The representatives stated that they itemized all independent expenditures and filed 24/48 hour notices by check date rather than by dissemination date. They related that they planned to hire additional staff in the future and had developed a new procedure to track independent expenditures by dissemination date.

### **Interim Audit Report Recommendation and Committee Response**

The interim audit report recommended that NRLPAC provide evidence that the 24/48 hour notices were timely filed or submit any written comments it considered relevant. Further, it was recommended that NRLPAC submit and implement revised procedures for tracking the dissemination date for independent expenditures and the relevant aggregation for both 24 and 48 hour notices.

<sup>1</sup> The Audit staff noted that subsequent to the general election, and in response to Requests for Additional Information from the Reports Analysis Division, NRLPAC filed over 400 24/48 hour notices pertaining to communications reported as disseminated between October 1 and November 1, 2004, totaling about \$1,800,000. Obviously these notices were filed late.

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Mary Moss or Thomas Nurthen at 694-1200.

**Attachments:**

**Finding 2 – Failure to File Notices of Independent Expenditures**

cc: Lorenzo Holloway  
Lawrence Calvert